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In the Supreme Court

OF THE

United States

MAY TERM, 1926.

No. 344

T. H. DEAL and UNITED STATES FIDELITY & GUARANTY COMPANY OF BALTIMORE, MARYLAND (a corporation),

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI
To the United States Circuit Court of Appeals
For the Ninth Circuit
and
BRIEF IN SUPPORT THEREOF.

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PETITION FOR WRIT OF CERTIORARI
To the United States Circuit Court of Appeals For the Ninth Circuit.

To the Honorable William Howard Taft, Chief Justice, and the Associate Justices of the Supreme Court of the United States:

The petitioners herein, deeming themselves aggrieved by a decision of the Circuit Court of Appeals for the Ninth Circuit in a case in which they were plaintiffs in error and the United States of America

was defendant in error, respectfully petition your Honorable Court to grant a writ of certiorari for the review of said decision, and in that behalf respectfully show:

That in and by said decision said Circuit Court of Appeals has decided an important question of Federal law which has not been, but should be, settled by this Court.

The question involves the responsibility, as defined by the Postal Laws and Regulations, of a postmaster for the loss by theft of registered mail.

On September 15, 1921, petitioner T. H. Deal was postmaster at Fairbanks, Alaska, and petitioner United States Fidelity & Guaranty Company was surety on his official bond. On said day the First National Bank of Fairbanks registered at the Fairbanks office a package addressed to Frank Doner, special disbursing agent of the Alaska Engineering Commission, Healy, Alaska. As there was no post-office at Healy, the package was registered to Nenana. It contained $9,900.00 in currency and $37.65 in silver. The package remained in the Fairbanks office during the night of September 15, 1921, and was dispatched on the morning of the 16th, reaching Nenana in the afternoon of that day. Upon its arrival it was found to have been rifled, the currency removed, and an old magazine substituted.

Where the package was rifled, whether in the post-office at Fairbanks, or in the course of its transmission to Nenana, the Government was never able to discover; nor was it ever able to discover who was guilty of the theft.

More than a year and a half after the theft occurred a suit was commenced in the District Court of the Territory of Alaska, Fourth Division, by the United States of America as plaintiff against petitioners herein on the bond executed by them and given to secure the faithful performance by Deal of his duties as postmaster, to recover the amount stolen, namely, $9,900.00, with interest and costs.

The complaint alleged, among other things, that the theft occurred in the Fairbanks office and that the money stolen was property of the United States, but there was no allegation that the postmaster knew that the package contained money or that it was Government property, nor was any evidence adduced at the trial to prove that the postmaster had such knowledge.

The complaint further alleged that the package was opened and rifled due to the postmaster's negligence and disregard of the Postal Laws and Regulations, but no particular act of negligence was alleged as being the cause of the loss. Negligence as a conclusion was alleged, but no specific act having causal connection with the theft was alleged to have been negligently performed or omitted.

At the trial of the action the postmaster admitted that he failed to observe some of the postal regulations, but no evidence was adduced tending in the slightest degree to prove that the theft proximately resulted from any such omission or from any other act on his part.

The trial Court gave various instructions to the jury, similar in effect to the following (R. 403):

> "You are instructed that if you find and believe from a preponderance of the evidence in this case that a loss occurred to the plaintiff herein in the United States postoffice at Fairbanks, Alaska, either on the night of September 15, 1921, or in the morning of September 16, 1921, from the registered package in controversy in this action, and that during said time, or any part of said time, the defendant Deal permitted unauthorized persons to have access to the work-room of the postoffice where said registered package was then kept or stored, you should return a verdict for the plaintiff herein; otherwise your verdict should be for the defendants."

Exceptions were duly taken to this and other instructions of its kind on the ground, among others, that under it the jury were in effect directed to return a verdict for the plaintiff, if they found that the theft occurred in the Fairbanks office, even though there was no evidence that the act of the postmaster in permitting unauthorized persons to have access to his office was the proximate cause of the theft.

Verdict and judgment went for the plaintiff as prayed, and on writ of error to the Circuit Court of Appeals judgment was entered February 15, 1926, affirming the judgment of the Alaska District Court. (R. 554.)

Thereafter, on March 12, 1926, petitioners filed with said Circuit Court of Appeals a petition for rehearing. The same was denied March 22, 1926. (R. 555.)

By its decision the Circuit Court of Appeals holds that, by virtue of the provisions of Section 291 of the Postal Laws and Regulations, a postmaster is responsible for the loss by theft of registered mail if he has

failed to observe any of the regulations, even though it may not be shown that the loss proximately resulted from his negligence.

Said Section 291 is as follows:

> "When a postoffice has been robbed, the postmaster shall immediately report all the facts to the Chief Inspector and to the postoffice inspector in charge of the division in which the postoffice is located. (See Sec. 35.) The report should give, if possible, all the circumstances connected with the robbery, the date, a detailed inventory of the loss, the denominations of stamped paper stolen, the amount of postal and money-order funds and of each class of Government property. *The postmaster shall be held responsible for the loss if he fails to exercise due care in the protection of the property.* If the loss includes the mail key the number should be given. (See Sec. 1527.) Full particulars regarding registered mail lost or rifled should be reported. The Chief Inspector shall promptly notify the Assistant Attorney General of every such casualty from which a claim for credit under the provisions of Section 150 may arise." (Italics added.)

Petitioners herein contend that the responsibility of a postmaster for the loss by theft of registered mail is defined, not by Section 291 of the Regulations, but by Section 940 thereof, and that unless it is shown that the loss was the proximate result of his negligence he cannot be held therefor.

Section 940 of the Regulations is as follows:

> "Postmasters and other postal employees will be held personally responsible by the Post Office Department for the wrong delivery, depredation upon, or loss of any registered letter or parcel, if such wrong delivery, depredation, or loss be due to negligence or disregard of the regulations."

In its decision the Circuit Court of Appeals says:

> "There is no conflict between Sections 291 and 940. The latter defines the general responsibility of postmasters and the former their responsibility when post offices are robbed. The general responsibility of a postmaster is that of a bailee charged with a high degree of care. U. S. v. Rogde, 214 F. 283, 295. If his post-office is robbed and he has failed to exercise due care of the stolen property he is responsible absolutely and it is not necessary for the government to show that his want of care was the proximate cause of the loss."

Petitioners herein contend that the responsibility declared by Section 291 applies only to the loss of Government property, when a postoffice has been robbed; and that the only responsibility or duty charged against the postmaster by said section, with reference to registered mail lost or rifled, is to report full particulars.

Petitioners submit that the responsibility of a postmaster for the loss by theft of registered mail is defined by Section 940, and not by Section 291, and that therefore the judgment of the Circuit Court of Appeals herein is erroneous and cannot be sustained, since by it petitioners are held liable for damages not necessarily occasioned by any act of the postmaster, whereas under Section 940 there can be no liability except where the loss by theft is the proximate result of his negligence.

Wherefore, and for the reasons set forth in their brief filed herewith, petitioners pray that a writ of certiorari be issued to the Circuit Court of Appeals for the Ninth Circuit commanding it to certify to this

Court for review a transcript of the proceedings in said cause, and that upon such review the judgment of said Court be reversed.

Dated, San Francisco,
April 16, 1926.

Respectfully submitted,
LOUIS S. BEEDY,
Attorney for Petitioners.

In the Supreme Court
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No.

T. H. DEAL and UNITED STATES FIDELITY & GUARANTY COMPANY OF BALTIMORE, MARYLAND (a corporation),
Petitioners,

vs.

UNITED STATES OF AMERICA,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

OPINION OF COURT BELOW.

By the petition herein a writ of certiorari is sought to review the decision of the Circuit Court of Appeals for the Ninth Circuit in the case of T. H. Deal and United States Fidelity & Guaranty Company of Baltimore, Maryland, a corporation, plaintiffs in error, vs. United States of America, defendant in error. The

opinion of said Court has not yet been reported, but appears in the Record herein at pages 539-554.

GROUNDS OF THIS COURT'S JURISDICTION.

The judgment sought to be reviewed was rendered and entered February 15, 1926. (R. 554.)

By said decision the Circuit Court of Appeals has decided an important question of Federal law, to-wit, the responsibility of a postmaster, under the Postal Laws and Regulations, for the loss by theft of registered mail, a question which has not been, but should be, settled by this Court.

By said decision the Circuit Court of Appeals holds that the responsibility of a postmaster for such loss is defined by Section 291 of the regulations promulgated by the Postmaster General, not by Section 940 thereof, and that Section 291 makes a postmaster absolutely responsible for the loss if he has failed to observe any of the regulations, even though his omission of duty in no way contributed to the loss.

The question involved is one of great public importance. It vitally affects every postmaster in the land. If the decision of the Circuit Court of Appeals is correct, no person can afford to accept the office of postmaster while the present regulations remain in effect. A revision of the regulations could not be retroactive, consequently every postmaster in office now faces untold liabilities in no way the result of his lack of care. Justice to these holders of office, not alone to petitioners herein, demands that the question should

be considered and determined by this Court before the conclusion of the Circuit Court of Appeals becomes the settled definition of their responsibility.

Jurisdiction is invoked under Section 240 of the Judicial Code.

STATEMENT OF THE CASE.

The principal facts of the case are stated in the petition. On September 15, 1921, while petitioner Deal was postmaster at Fairbanks, Alaska, and petitioner Guaranty Company was his surety, a package containing $9900 in currency and $37.65 in silver was registered at his office. When it reached its destination the currency was gone and a magazine was in its place. The Government, claiming that the money stolen was public funds and that the theft occurred in the Fairbanks office, sued petitioners on their bond, charging that the postmaster was responsible for the loss because he failed to observe some of the Postal Regulations while the package was in his office, notwithstanding that there was no evidence that the theft proximately resulted from any omitted duty.

It was not alleged, nor was it claimed, nor was any evidence adduced to prove, that either the postmaster or any of his assistants or employees had any knowledge that the package was Government property. Indeed, no evidence was adduced to prove that either the postmaster or any of his subordinates had knowledge that the package contained money.

The action was brought in the District Court of the Territory of Alaska, Fourth Division, and was tried

to a jury. The postmaster admitted that he failed to observe some of the regulations. No evidence was adduced, however, that the theft proximately resulted from such neglect. The trial Court gave the following instructions, among others:

"You are instructed that if you find and believe from a preponderance of the evidence in the case that a loss of $9,900.00 occurred to the plaintiff herein in the postoffice at Fairbanks, Alaska, and that the defendant Deal failed to fully lock the safe in which was contained the registered package in controversy during the night of September 15, 1921, and morning of September 16, 1921, and that he did not use the full combination thereof for the purpose of locking it at said time, you should return a verdict for the plaintiff, otherwise your verdict should be for defendants." (R. 401-402.)

"You are instructed that if you find and believe from a preponderance of the evidence that a loss of $9,900.00 occurred to the plaintiff in the United States postoffice at Fairbanks, Alaska; and if you further find that at any time during the period that he was postmaster in said postoffice and prior to the 16th day of September, 1921, the defendant Deal failed to change the combination on the safe in which the registered package in controversy was stored during the night of September 15, 1921, and the morning of September 16, 1921, until it was despatched from the said postoffice, then you should find a verdict for the plaintiff, otherwise your verdict should be for the defendants." (R. 403.)

"You are instructed that if you find and believe from a preponderance of the evidence in this case that a loss occurred to the plaintiff herein in the United States postoffice at Fairbanks, Alaska, either on the night of September 15, 1921, or in the morning of September 16, 1921, from the

registered package in controversy in this action, and that during said time, or any part of said time, the defendant Deal permitted unauthorized persons to have access to the work-room of the postoffice where said registered package was then kept or stored, you should return a verdict for the plaintiff herein; otherwise your verdict should be for the defendants." (R. 403.)

Defendants objected to these instructions, and each of them, on various grounds, particularly on the ground that they charged defendants with liability for the theft regardless of the question of proximate cause.

Verdict and judgment were for the plaintiff. On writ of error to the Circuit Court of Appeals said judgment was affirmed on the ground that by virtue of the provisions of Section 291 of the Postal Laws and Regulations the postmaster was responsible for the loss even though it was not the proximate result of his failure to comply with the regulations.

ASSIGNMENTS OF ERROR.

Petitioners rely upon all assignments of error set out in the Record, but especially No. 30 (R. 470-471), No. 31 (R. 471) and No. 32 (R. 471-472), assigning error on the part of the trial Court in giving to the jury, over objections, the instructions above quoted.

ARGUMENT.

In affirming the judgment of the trial Court the Circuit Court of Appeals holds that inasmuch as the

verdict for plaintiff was necessarily a finding that the theft occurred in the Fairbanks office, it was sufficient to spell the liability of the defendants that the postmaster admitted failing to observe some of the postal regulations, in view of the provisions of Section 291, which section, and not Section 940, the Court holds, defines the responsibility of a postmaster when his office has been robbed.

Section 291 will be found on page 141 of the "Postal Laws and Regulations", 1913 Edition, and is as follows:

> "When a post office has been robbed, the postmaster shall immediately report all the facts to the Chief Inspector and to the post-office inspector in charge of the division in which the post office is located. (See sec. 35.) The report should give, if possible, all the circumstances connected with the robbery, the date, a detailed inventory of the loss, the denominations of stamped paper stolen, the amount of postal and money-order funds and of each class of Government property. The postmaster shall be held responsible for the loss if he fails to exercise due care in the protection of the property. If the loss includes the mail key the number should be given. (See sec. 1527.) Full particulars regarding registered mail lost or rifled should be reported. The Chief Inspector shall promptly notify the Assistant Attorney General of every such casualty from which a claim for credit under the provisions of section 150 may arise."

Section 940 will be found on page 468 of said compilation, and is as follows:

> "Postmasters and other postal employees will be held personally responsible by the Post Office Department for the wrong delivery, depredation upon, or loss of any registered letter or parcel if

such wrong delivery, depredation, or loss be due to negligence or disregard of the regulations."

In its decision the Circuit Court of Appeals says (R. 547):

> "There is no conflict between Sections 291 and 940. The latter defines the general responsibility of postmasters and the former their responsibility when postoffices are robbed. The general responsibility of a postmaster is that of a bailee charged with a high degree of care. U. S. vs. Rogde, 214 F. 283, 295. If his postoffice is robbed and he has failed to exercise due care of the stolen property he is responsible absolutely and it is not necessary for the Government to show that his want of care was the proximate cause of the loss."

Whether Section 291 or Section 940 defines the responsibility of postmasters when registered mail has been stolen is the fundamental question presented by this petition, and it is the contention of petitioners that the Circuit Court of Appeals is in error in holding that the provisions of Section 291 are controlling in such a case.

SECTION 940, NOT SECTION 291, DEFINES RESPONSIBILITY WHEN REGISTERED MAIL IS STOLEN.

We submit that the Circuit Court of Appeals is in error when it says that Section 940 "defines the general responsibility of postmasters" and Section 291 "their responsibility when post offices are robbed". We submit that the Court has given neither section its true significance. We submit that Section 291 defines the responsibility of postmasters for *Govern-*

ment property stolen, and that Section 940 defines their responsibility for *registered mail* stolen.

STRUCTURE OF REGULATIONS PROVES OUR CONTENTION.

Section 291 is a part of Subdivision V, of Chapter 3, of Title Three of the Postal Laws and Regulations. The subject of Title Three is "Post Offices". Chapter 3 thereof is entitled "General Provisions Relating to Post Offices". Subdivision V of Chapter 3, in which Section 291 is found, is entitled "Miscellaneous Provisions".

Section 940 is a part of Subdivision V, of Chapter 1, of Title Six of the Postal Laws and Regulations. The subject of Title Six is "Registry System". Chapter 1 thereof is entitled "Registration of Domestic Mail Matter". Subdivision V of Chapter 1, in which Section 940 is found, is entitled "Treatment of Registered Matter at Offices of Delivery".

It is at once apparent that Title Three, which includes Section 291, covers *general* provisions, and that Title Six, which includes Section 940, covers *particular* provisions,—provisions relating exclusively to the registry system. The very structure of the Regulations challenges the conclusion of the Circuit Court of Appeals that Section 940 defines the general responsibility of postmasters and Section 291 their responsibility when post offices are robbed. We submit that the structure of the Regulations compels a conclusion directly to the contrary of that reached by the Court.

SECTION 291 APPLIES TO GOVERNMENT PROPERTY ONLY.

Considering Section 291, standing alone and unaffected by the structure of the Regulations, we submit that the responsibility of a postmaster thereby defined is confined to *Government property* stolen. By its terms it requires him, when his office has been robbed, to make an immediate report to the inspector in charge, giving, if possible,

> "all circumstances connected with the robbery, the date, a detailed inventory of the loss, the denominations of stamped paper stolen, the amount of postal and money-order funds and of each class of government property."

Immediately following these directions comes the provision that "the postmaster shall be held *responsible for the loss*", etc. The loss referred to must necessarily be the property previously mentioned,—*all Government property*. Registered mail is not included. It is later in the section that registered mail is mentioned, and then in the following language:

> "Full particulars regarding registered mail lost or rifled should be reported."

The only duty or responsibility imposed upon the postmaster by this section of the regulations with reference to registered mail lost or stolen is to report full particulars thereof. If it had been intended to make the postmaster responsible for registered mail as for stamped paper and other Government property, we submit that registered mail would have been mentioned and included with the Government property referred to and have preceded the definition of the scope of the postmaster's responsibility. We submit

that it is perfectly clear that the section was drafted with a design that the high degree of responsibility thereby created should apply only to Government property.

We submit that the form in which Section 291 is cast discloses a clear intent to omit all reference to the postmaster's responsibility for loss or theft of registered mail, and the reason why the section is so cast lies in the fact that his responsibility in that particular is elsewhere defined, namely, in Section 940.

SECTION 940 APPLIES TO REGISTERED MAIL STOLEN.

Turning now to Section 940, and considering it standing alone and unaffected by the structure of the Regulations, we submit that it defines in unmistakable terms the responsibility of postmasters for registered mail stolen. We submit that there is nothing in the frame of the section which justifies the conclusion of the Circuit Court of Appeals that it defines the general responsibility of postmasters. It very definitely declares that they will be held responsible if wrong delivery, depredation or loss "of any registered letter or parcel" be due to their "negligence or disregard of the regulations". This is not a declaration of general responsibility. It is a declaration of specific responsibility, a responsibility conditioned upon the absence of due care, a responsibility that does not attach unless it is made to appear that if an omitted duty had been performed no wrong delivery, depreda-

tion or loss would have occurred, and a responsibility confined to a "registered letter or parcel".

Furthermore, the word "depredation" comprehends burglary, theft or robbery. One definition of the word "depredate", given by all authorities, is "to rob or pillage". In the case before us we have a definite instance of depredation. The package was broken open and a magazine substituted for the currency. If consequence is to be attributed to words, the case presented is not one of robbery at all, but purely one of depredation or theft. Robbery implies violence or threats of injury. No violence, no threat of injury, was resorted to in the case before us. That much, at any rate, we know.

It is clear, therefore, that to reach the conclusion that the responsibility of the postmaster was defined by Section 291 instead of by Section 940, the Circuit Court of Appeals was compelled to give to the word "depredation" found in Section 940 a literal or technical significance, a meaning not sufficiently comprehensive to cover a theft perpetrated as this one was, and to give to the word "robbery" found in Section 291 a liberal or general significance, a meaning sufficiently comprehensive to cover ordinary theft. We submit that the Court was not justified in resorting to such an extremity. If it was compelled to give literal effect to Section 940, it was not at liberty to give general effect to Section 291. Justice cannot be the issue of such inconsistency.

While the regulations of the Post Office Department have the force of law, it is not to be supposed

that they were drafted with the same refinement of definition as are criminal statutes. We maintain that the regulations should be construed or interpreted liberally so as to give effect to their intent or purpose. That it was the intent that Section 940, and not Section 291, should define the responsibility of postmasters for the theft of registered mail admits of no doubt. That this is so is obvious, not only from the language of the respective sections, but from the structure of the regulations as a whole, and from the fact that Section 940 is a part of Title Six relating to the registry system; and such being the obvious intent, we submit that it was the duty of the Court, under fundamental principles of statutory construction, to so construe other sections of the regulations, if it could be reasonably done, as not to nullify that intent. Section 940 ceases to be of any consequence, in instances of depredations, if the decision of the Circuit Court of Appeals is correct. Section 291 should be construed in such a way as to uphold and not nullify Section 940, and it is clearly susceptible of such a construction. Indeed, as we have pointed out, it is a manifestly unwarranted construction of Section 291 to make it applicable in any respect whatever to the responsibility of postmasters for the theft of registered mail.

SAVING CLAUSE OF SECTION 291 INAPPLICABLE TO REGISTERED MAIL.

On the proposition under discussion it is to be observed that if Section 291 defines the responsibility

of postmasters for the theft of registered mail, a more onerous responsibility is cast upon them therefor than for the theft of Government property. Section 291 contains a saving clause, applicable to Government property stolen but impossible of application to registered mail stolen. Said clause reads:

> "The Chief Inspector shall promptly notify the Assistant Attorney General of every such casualty from which a claim for credit under the provisions of section 150 may arise."

Section 150 of the Regulations is Chapter 231 of the Act of May 9, 1888 (25 Stat. 135), as amended by Chapter 424 of the Act of June 11, 1896 (29 Stat. 458). It is as follows:

> "The Postmaster General * * * is hereby authorized to investigate all claims of postmasters for the loss of money-order funds, postal funds, postage stamps, stamped envelopes, newspaper wrappers, and postal cards, belonging to the United States in the hands of such postmasters, resulting from burglary, fire, or other unavoidable casualty, and if he shall determine that such loss resulted from no fault or negligence on the part of such postmasters, to pay to such postmasters, or credit them with the amount so ascertained to have been lost or destroyed, and also to credit postmasters with the amount of any remittance of money-order funds or postal funds made by them in compliance with the instructions of the Postmaster General, which shall have been lost or stolen while in transit by mail from the office of the remitting postmaster to the office designated as his depository, or after arrival at such depository office and before the postmaster at such depository office has become responsible therefor: *Provided,* That no claim exceeding the sum of ten thousand dollars shall be paid or credited until after the facts shall have been

ascertained by the Postmaster General and reported to Congress, together with his recommendation thereon, and an appropriation made therefor: *And provided further,* * * * that no claim for losses * * * shall be allowed unless presented within six months from the time the loss occurred.

2. It is hereby made the duty of the Postmaster General to report his action herein to Congress annually, with his reasons therefor in each particular case."

Provision is thus made to relieve a postmaster from the consequences of the responsibility imposed by Section 291 for loss by theft where the loss is not the result of his negligence, *but the relief is confined to Government property stolen.* No provision is made for relief when registered mail is stolen. For the theft of registered mail, whether due to his negligence or not, Section 291, if it applies, casts the postmaster with a responsibility limited only by the value of the thing stolen, and from which he cannot be relieved, if he has failed to observe any of the regulations, and this despite the fact that the liability of the Government is limited to $100.00.

A postmaster knows what Government property is in his care and he knows its value. As to such property he knows the extent of his liability. But he has no means of knowing the value of registered mail entrusted to his care, unless the person registering it voluntarily declares its value. He cannot compel a declaration. He is obliged to accept the parcel and, should it be stolen while in his care, obliged to make good its full value, if he has failed to fully observe

the regulations, even though his neglect in no way contributed to the theft.

It thus appears, if the decision of the Circuit Court of Appeals is correct, that a more onerous responsibility is cast upon postmasters for the loss by theft of registered mail than for the loss by theft of Government property, and a more onerous responsibility for registered mail than the Government itself assumes. It is inconceivable that the postal regulations were drafted with such a design, and we submit that they are not reasonably susceptible of such a construction.

In the case of *United States v. Rogde*, 214 F. 283, 294, Judge Elliott says, after quoting Section 150 of the Regulations last hereinabove quoted:

> "By an act approved January 21, 1914, the indemnity above provided for was extended to include postal savings funds, postal savings cards, postal savings stamps, postal savings certificates, key deposit funds, funds deposited to cover postage on mailing, and funds deposited to cover orders for stamped envelopes. Congress by the statutes has expressly provided for the relief of postmasters from the absolute liability that is imposed upon them by statute for the property that belongs to the government of the United States. The very fact that these statutes have never been extended to cover ordinary mail matter or registered mail is persuasive at least that such extraordinary liability with respect to mail matter was never contemplated and that the interpretation given the statutes and regulations by Congress was that there existed no such liability without negligence."

For the foregoing reasons we respectfully submit that the responsibility defined by Section 291 applies

to Government property alone, and that Section 940 defines the responsibility of postmasters as to registered mail.

In conclusion we would point out that the proposition for which we contend is not affected by the circumstance that the money stolen was Government property. The decision of the Circuit Court of Appeals is not grounded upon that circumstance. To the contrary, that Court expressly holds that "Government money contained in a sealed package sent through the mail" is not "money which as such comes into the possession of the postmaster". (R. 544-545.) But even if it were otherwise it would be of no consequence in this case, for the reason that it was not alleged in the complaint, nor did the Government claim, that either the postmaster or any of his assistants or employees had any knowledge that the package was Government property. A postmaster assumes a high degree of responsibility for Government property coming into his possession, but it would be manifestly unjust, and wholly unsupportable, to charge him with such responsibility for property which he did not know belonged to the Government.

For the reasons stated it is respectfully submitted that the writ of certiorari prayed for should be issued and that the judgment of the Circuit Court of Appeals should be reversed.

Dated, San Francisco,
April 16, 1926.

LOUIS S. BEEDY,
Attorney for Petitioners.